IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

INCOME TAX APPEAL NO.216 OF 2002

Messrs Video Master .. Appellant

v/s.

Joint Commissioner of Income-tax,
Special Range.21, Mumbai .. Respondent

Mr.J.D.Mestry i/by Mr.A.K.Jesani for appellant.

Mr.R.V.Desai, senior counsel with Ms.S.V.Bharucha
and Mr.Vijay Kantharia for respondent.

CORAM : R.M.LODHA AND
J.P.DEVADHAR, JJ.

DATED : 27th August, 2004

P.C.

Heard.

2. M/s. Video Master, a partnership firm registered under the provisions of the Indian Partnership Act, 1932 is the assessee and appellant before us. The controversy relates to the assessment for the block period 1.1.1985 to 24.8.1995. On 24.8.1995, the search operation under section 132 of the Income Tax Act was carried out at the various premises of Time Video Group and it is not in dispute that the assessee-firm was also covered under the search operation. During the course of search, the statement of Shri D.N.Shah, partner in the assessee-firm was recorded under section 132(4) of the Act. At the premises of Shri D.N.Shah, the partner of the assessee-firm,

large number of vouchers and loose sheets, various documents containing rough scribbling and unaccounted transaction were recovered. Shri D.N.Shah later on sought to retract the statement made under section 132(4) of the Act. The assessing officer on consideration of the entire material was of the view that the disclosure made by the partner Shri D.N.Shah was duly supported by the documents seized during the course of search and accordingly, made addition of Rs.1,83,50,000/-. The matter went up to the Income Tax Appellate Tribunal. The Tribunal recorded, as a matter of fact, on consideration of the entire material that number of incriminating documents containing financial transaction running into several pages were seized from the residence of Shri D.N.Shah-the partner of the assessee-firm and his statement recorded under section 132(4) was voluntary, without duress and was duly supported by the documents seized during the search. The Tribunal found that the retraction of the statement by Shri D.N.Shah after a month was after thought.

3. The Tribunal observed thus-

> "Therefore, the facts regarding undisclosed income of Rs.3 crores were disclosed by him spontaneously, without any duress or pressure."
>
> "The question Nos.8 and 9 put to him make it abundantly clear that the disclosure was voluntary and specific."

"Thus, the allegation levelled by the learned counsel that the statements recorded u/s.132(4) were not voluntary is without any basis and the same is rejected. The very fact that the subsequent retraction of statement by Shri D.N.Shah was after about a month makes it abundantly clear that the retraction were an after thought and the original statement was given voluntarily without any duress or pressure."

"There is nothing in the affidavit filed by Shri D.N.Shah which would prove that the search party intimidated him for making the disclosure of Rs.3 crores."

"If Shri D.N.Shah would not have made this confessional statement, the Department could have continued the search and thereafter, the Department could have investigated the entire matter on the basis of the various documents seized during the course of search. By making the disclosure of Rs.3 crores, Shri D.N.Shah stopped the entire process of further investigation as the Department accepted the disclosure and closed further investigation. After making such an offer of settlement in the form of confessional statement which is also accepted by the Department, the retraction filed by Shri D.N.Shah after about a month from the date of confessional statement cannot be considered as a valid retraction and the same is nothing but a well planned device to frustrate the efforts of the Department to unearth unaccounted funds by resorting to action u/s.132(4) of the Act. In view of the discussion above, the retraction filed by the assessee is therefore, an after-thought and the same is rejected."

"Annexure-A is a bunch of 13 loose papers, pages-1 & 2 contain rough scribblings which are actually connected with the films made by this group. These papers were seized from the residence of Shri D.N.Shah. Page No.1, on the front side contains certain notings as we have mentioned above. The notings on this page indicate payment out of business receipts in India by Shri D.N.Shah. These figures cannot be in one or two digits as explained by Shri D.N.Shah. These transactions are among the film producer and distributors, therefore, such transactions must be in lakhs only as contended by the learned DR. These accounts had been maintained very systematically. The various

amounts mentioned appear to be collection made or to be made from various territories which would normally be in lakhs of rupees. Shri D.N.Shah also admitted in his statement that part of the writing on page no.1 & 1A which are in blue ink are written by him. It appears from notings that pages no.1 & 1A are related to each other as figure of 3.8 lakhs, 55 lakhs, 14 lakhs and 76 lakhs are there in both pages. This is quite obvious from these pages that the assessee is having unaccounted transactions running into crores in his file business. Annexure A to Page-97 seized from Ratnajyot Industrial Estate (Departmental Paper Book Page-34) indicates that the assessee was making large amount of payment in cash which have not been reflected in the books of account. It was brought to our notice by the learned DR that no explanation was given at the time search with respect to these cash payments. This also supports the view that the assessee was indulge in cash transactions on a large scale. It was also found during the course of search that the assessee was having large number of vouchers for expenditure which were signed but the amount of disbursement was not mentioned. This evidence also establishes the modus operandi of the assessee for manipulating the expenditure. The assessee did not give any explanation of these vouchers during the course of search. Annexure-I, pages 58, 66 to 69 (assessee's paper book, pages 534 to 58) also reveals large amount of transactions in cash being received and paid in cash on exhibition of films at various picture halls. Page No.58, refers to assessee's paper book page -54, On the top of this page the name of the film is written as "Hum Se Hai Muqabala" in front of 12 cinema halls Savithri and Alankar and against that 20 cash and 35 cash is written. These are obviously the coded figures related to cash receipts on exhibition of picture at Savithri and Alankar picture halls. Similarly, page no.68 and 69 of seized material pertains to cash receipts and payments with respect to the film "Him Se Hai Muqabala". It was also contended by the Department that the picture "Sub Se Bada Khiladi" was produced by Keshu Ramsay, proprietor of D.M.S.Films. The film was financed by Times Group. During the course of search, it was found that M/s.D.M.S.Film was a benami for Times Group. It was also ascertained that most of the expenditure for the film was done from the office of Times Group. All the cheques, drafts etc., were

sent and received from the office of the Times Group. The papers seized from the residence of Shri Pravin Shah revealed that payment of Rs.45,000/- cash and Rs.45,00/- by cheque. Similarly, other papers seized also revealed the payments by the assessee group in cash. In view of the aforesaid discussion, it appears that the assessee firm was indulging in cash transactions which runs in to crores. The documents seized during the course of search also revealed that Shri Ramesh N. Shah, brother of Shri D.N.Shah has a large number of bank accounts in Dubai and Zurich in which huge cash deposits are being made. The total deposits for certain period for which pass book were found at the time of search was in excess of Rs.35 crores. Shri Ramesh N. Shah made a gift of Rs.4.58 crores to various individuals and concerns of Times Group in India. The assessee group was having blank signed cheque books of Shri Ramesh N.Shah and amount were withdrawn by them by filling in the amounts at will. Thus, the learned DR contended that the assessee perhaps, was indulging in hawala transactions i.e. the assessee was sending cash abroad and bringing the money back to India in the form of NRI gifts. It was also revealed that one of the main persons of the group was booked under FERA/COFEPOSE and was behind bar for a long time. The various documents mentioned above are quite indicative regarding the large scale indulgence of the assessee in cash transactions which run into crores of rupees. Therefore, the disclosure made by Shri D.N.Shah of Rs.3 crores u/s.132(4) of the Act, is fully supported by the documents seized during the course of search. After going through the facts and circumstances of this case, we find that the addition made by the AO at Rs.1,83,50,000/- is quite insignificant and the same does not require any interference from our side."

"But, in the present case, as we have mentioned above, the Department seized a number of incriminating documents which contained financial transactions running into several crores. Therefore, the statement recorded in the present case u/s.132(4) was fully supported with the documents seized during the course of search."

4. The consideration of the matter by the Tribunal

is based on the material and we do not find any infirmity in the conclusion arrived at by the Tribunal that the statement of Shri D.N.Shah-partner of the assessee-firm recorded under section 132(4) was voluntary, without any duress and fully supported by the documents seized during the course of search.

5. The learned counsel was not right in submission that addition of Rs.1,83,50,000/- has been made solely on the statement of Shri D.N.Shah which was not voluntary and the same was retracted later on. It is true that the statement given by Shri D.N.Shah was retracted but the said retraction was after a month and was rightly held to be after thought by the Tribunal. As a matter of fact, the statement of Shri D.N.Shah is based on the evidence seized and recovered during the course of search operation. In other words, the incriminating documents which were seized during the search operation were in fact, corroborated by the statement of Shri D.N.Shah-partner of the firm. The reliance placed by the learned counsel for the appellant on the budget speech of the Minister of Finance in the year 2003-2004, the note issued by the department of revenue dated 10th March, 2003 and the judgment of the Delhi High Court in the case of Commissioner of Income Tax v. Ravi Kant Jain, 250 ITR 141 have no application in the facts

and circumstances of the present case.

6. Addition of Rs.1,83,50,000/- towards undisclosed income made by the assessing officer and confirmed by the Income Tax Appellate Tribunal is concluded on facts.

7. No substantial question of law arises. Appeal is dismissed in limine.

(R.M.LODHA, J.)

(J.P. DEVADHAR, J.)